

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5539 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

SATISH VASANTRAI BHATT

Versus

COMMISSIONER OF POLICE

Appearance:

MR GONDALIYA for MR YOGESH S LAKHANI for Petitioner
MR DP JOSHI AGP for Respondent Nos. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 01/11/1999

ORAL JUDGEMENT

#. Heard the learned advocate Mr. Pravin Gondaliya for
Mr. Y.S. Lakhani, on behalf of the petitioner and Mr.
D.P. Joshi, learned AGP for respondent nos. 1, 2 & 3.

#. The detention order dated 5.1.99 passed by respondent
no. 1 - Commissioner of Police, Rajkot city against the
petitioner in exercise of power conferred under section
3(1) of the Gujarat Prevention of Anti-Social Activities
Act, 1985 ("PASA" for short) is challenged in the present

petition under Article 226 of the Constitution of India.

#. The grounds of detention supplied to the petitioner under section 9(1) of PASA, copy of which is produced at Annexure : B indicate that two criminal cases vide CR Nos. 473/98 and 790/98 are registered against the petitioner on 24.12.98 at Malaviyanagar Police Station, Rajkot and Rajkot Taluka Police Station, Rajkot respectively. The said criminal cases are registered in respect to the offences made punishable under sections 406, 426, 467, 468, 471, 472, 473, 474, 489A,B & C read with section 120B of I.P.C. It is alleged against the petitioner that in conspiracy with his accomplice, the petitioner has been involved in the illegal criminal activity of creating false valuable securities like forged stamp papers, Indira Vikas Patras, Revenue Stamps etc. and he used to put the same in circulation and on account of the said illegal criminal activity, he earned approximately Rs. 74,07,041/-.

#. Over and above the above-stated facts arising from the criminal cases which are pending investigation, two witnesses on assurance of their anonymity have supplied information against the petitioner and his anti-social activity regarding forgery and creating false valuable security and putting the same into circulation.

#. On the basis of the above-stated material, respondent no. 1 as detaining authority has come to conclusion that the petitioner is a "dangerous person" within the meaning of section 2 (c) of PASA. That resort to general provisions of law is not likely to prevent the petitioner from continuing his illegal criminal activity and as such, the impugned order has been passed.

#. The petitioner has challenged the impugned detention order on numerous grounds. It has been contended at the bar on behalf of the petitioner that while passing the impugned order, the detaining authority has failed to consider the aspect of less drastic remedy regarding cancellation of bail. Reliance is placed on the observations made in the matter of Zubedabibi vs. State of Gujarat, reported vide 1995 (2) GLR 1134.

#. On scrutiny of papers, it appears that in para 8 of the grounds of detention, the detaining authority has observed that the petitioner was in judicial custody in respect to the criminal cases registered against the petitioner but there was possibility that he would get himself released on bail and continue his anti-social activity and therefore, it was necessary to pass

detention order under section 3(1) of PASA. The said approach of the detaining authority cannot be said to be proper approach in the present case. That in the proceedings of L.P.A. No. 1056/99, decided on 15.9.99 (Coram: C.K.Thakkar & A.L.Dave, JJ), relying on the observation made by Division Bench of this Court in the case of Zubedabibi (Supra), the proposition is approved that non-consideration of less drastic remedy like cancellation of bail amounts to non application of mind vitiating the subjective satisfaction of the detaining authority and rendering the impugned detention order invalid.

#. In the instant case, it is difficult to uphold the detention order as the detaining authority has failed to consider less drastic remedy of opposing the bail or cancellation of bail in a pending criminal case before passing the detention order.

#. As the petition succeeds on the above-stated ground alone, it is not necessary to consider other contentions raised by the petitioner.

##. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 5.1.99 passed by respondent no.1 against the petitioner is hereby quashed and set aside. The petitioner-detenu-Satish Vasantraai Bhatt is ordered to be set at liberty forthwith, if not required in any other case. Rule to that extent is made absolute.

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